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May 17, 1996

HAND DELIVERY

Ms. Jackie Chorney
Legal Advisor to Hon. Reed E. Hundt
Federal Communications Commission
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Re: Ex Parte Presentation
CS Docket No. 96-46 - Open Video Systems

Dear Ms. Chorney:

Following up our discussions, I am writing on behalf of Tele-Communications, Inc. ("TCI") to urge the Commission to make clear that, upon adoption of open video system rules, operators of grandfathered video dialtone systems must terminate their VDT systems and obtain either an OVS certification or a cable franchise. The urgent need for this clarification is illustrated by the situation that TCI faces in San Jose, California, where Pacific Telesis Group ("Pacific") continues to add capacity and subscribers to an unauthorized VDT system while it awaits a cable franchise from the city.

Having determined to abandon video dialtone, Pacific should not be permitted to use the pendency of its franchise request as an excuse to continue operating under a superseded regulatory regime. Pacific should be barred from constructing additional capacity or adding new subscribers until it has obtained a franchise or an OVS certification.

Background. In July 1995, the FCC granted Pacific's request to provide commercial video dialtone service in selected areas of California, including San Jose. Pacific later filed, and then subsequently withdrew, its proposed channel reservation tariff. The proposed tariff addressed certain rates, terms, and conditions governing its provision of video dialtone service.

Although Pacific withdrew its proposed tariff, it constructed a video dialtone system and is currently offering video dialtone service to approximately 1,000 San Jose homes without charge. Even though it is receiving no revenues from the provision of VDT, Pacific is giving away a 13-inch color television set to every household that agrees to take the video

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dialtone service and paying the city \$3 per month in lieu of franchise fees for each VDT subscriber. TCI believes that these actions raise serious questions of cross-subsidy and cost allocation in connection with the offering.

Pacific representatives have called their offering a "limited technology trial" designed to test operating systems and business processes. Other than providing letters to the Commission stating its intention to proceed with a trial rather than the originally-proposed commercial offering, however, Pacific has neither received Section 214 approval to proceed with this video dialtone trial nor has it filed an associated tariff.

Notwithstanding this lack of approval, Pacific is constructing a video delivery system that TCI believes will soon pass a substantial portion of the households in San Jose. On May 1, 1996, Pacific Bell Video Services ("PBVS"), a subsidiary of Pacific, filed a franchise application to provide cable television services in the City of San Jose, including the area already served by Pacific's technical video dialtone trial. San Jose has not yet acted on Pacific's application.

Termination of Grandfathered VDT Systems. The Telecommunications Act of 1996 ("1996 Act") repealed the video dialtone requirements issued in CC Docket 87-266, but stated that any video dialtone system "approved" before the date of enactment of the 1996 Act need not be terminated. Because Pacific has never received Commission approval to conduct such a technical trial, its video dialtone offering cannot be considered approved prior to the enactment of the 1996 Act. While Pacific may have a desire to continue to provide its video services to customers in San Jose, it should not be permitted to do so without legitimate Commission or city authorization.

The above-captioned rulemaking offers the Commission an opportunity to clarify the grandfathering of VDT systems and, in so doing, address the situation described above. Specifically, TCI respectfully requests that the Commission make clear that any residual video dialtone systems must be terminated upon the FCC's adoption of open video system regulation. Pacific (and any other operator of a residual VDT system) should be barred from constructing additional capacity or adding new subscribers until it has obtained a franchise or an OVS certification. Such an outcome is far preferable to maintaining a few isolated examples of video dialtone, and is consistent with Congress's desire to establish a new regulatory structure to replace VDT.

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Pacific should not be able to construct a new cable system without city authorization, under cover of its VDT operation. Congress certainly did not assume that VDT systems would operate outside of Federal or local control, as is the case in San Jose.

Your attention to this matter is appreciated. Should you have any questions, feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Howard J. Symons", with a long horizontal flourish extending to the right.

Howard J. Symons

cc: Maureen O'Connell
Mary McManus
Suzanne Toller
John E. Logan
Rick Chesson
Meryl Icove
Secretary, FCC (2)